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<b>SMR TECHNOLOGIES, INC. and</b>	)	
<b>B/E AEROSPACE, INC.,</b>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 00-2563
	)	
<b>AIRCRAFT PARTS INTERNATIONAL</b>	)	
<b>COMBS, INC.,</b>	)	
	)	
Defendant.	)	
	)	

## I. Procedural Background

<sup>1</sup>API was formerly known as Aircraft Parts International Combs, Inc.

Tennessee. Each Plaintiff sued for breach of contract, and jurisdiction was therefore premised on diversity of citizenship under 28 U.S.C. § 1332.

Defendant filed an answer and counterclaim, also alleging breach of contract, against both SMR and BEA on August 22, 2000. Plaintiffs amended their complaint on November 6, 2000, adding further allegations of contract breach.

On December 27, 2000, this Court granted Defendant's first motion to dismiss BEA for lack of subject matter jurisdiction. The Court held that BEA's \$19,637.72 claim for damages could not be aggregated with SMR's \$77,295.00 claim, and that BEA's claim alone did not meet the \$75,000.00 jurisdictional requisite for diversity jurisdiction. The Court therefore dismissed BEA from the case.

On April 13, 2001, the Court granted partial summary judgment to SMR. Specifically, the Court 1) found that API committed material breaches by failing to pay for the products supplied to it and by terminating the Distributor Agreement between SMR and API without cause; 2) found that API's breach was the first uncured material breach of the Distributor Agreement, because the breaches that API alleged SMR committed either were not material or were waived by API, and therefore API did not have cause to terminate the contract; 3) held that it would not entertain arguments based on mutual mistake; 4) ordered API to pay damages to SMR in the amount of \$94,969.06<sup>2</sup> plus interest; and 5) declined to award attorney's fees to SMR. The Court also denied Defendant's motion for mediation or arbitration. The effects of this order were clarified in the Court's Order Clarifying Prior Order and Denying Defendant's Motion for Reconsideration of Prior

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<sup>2</sup>This sum represents the amount owing on the account plus interest at the contract rate of 18% annually.

Order, of February 5, 2004.

On April 10, 2003, with leave of the Court, SMR filed a second amended complaint, asserting damages for lost sales and profits in an amount not to exceed \$13,000,000.00.

On February 9, 2004, Defendant filed a motion to dismiss the case for lack of diversity jurisdiction, alerting the Court to several vital facts. First, and most important, Defendant stated that, while reviewing documents produced during the course of discovery, it discovered that BEA was not and had not been an Ohio corporation. During the course of this litigation, BEA has always been a Delaware corporation. Second, Defendant informed the Court that, according to records of the Secretary of State of Ohio, SMR was merged into BEA and out of existence on October 12, 2001. Plaintiffs never alerted the Court to either of these facts on their own initiative.

Defendant argues that, because both BEA and API were Delaware corporations, the case lacked complete diversity at the time Plaintiffs filed the complaint. Therefore, this Court was without subject matter jurisdiction to enter any orders other than a dismissal in this case, and it should have dismissed the case from federal court immediately. Defendant further argues that (1) this Court's order dismissing BEA for failure to meet the jurisdictional amount was a nullity, because the Court had no power to enter it; (2) BEA always remained in the case as a counterdefendant; (3) BEA is and has been the real party in interest, because SMR was previously BEA's wholly owned subsidiary and has now been merged out of existence into BEA; (4) the second amended complaint asserting \$13,000,000.00 in damages changed the nature of the suit, requiring reassessment of jurisdiction at that time; and (5) the Court should realign the parties to substitute BEA as the sole remaining plaintiff and then should reexamine jurisdiction after realignment. Defendant filed an amended motion to dismiss on February 11, 2004, arguing additionally that, had

Plaintiffs voluntarily dismissed BEA under Federal Rule of Civil Procedure 21, perhaps diversity jurisdiction could have been salvaged initially, but since the Plaintiffs did not do so, and the Court could not do so on its own initiative, diversity jurisdiction was never present.

SMR responded on March 4, 2004. Significantly, SMR admits that BEA was and still is a Delaware corporation. SMR claims that, at the time they filed the case, SMR and BEA were under the “mistaken belief that BEA was also an Ohio corporation.” (Pl.’s Mem. Opposing Def.’s Mot. to Dismiss for Lack of Subject Matter Jurisdiction at 2.) SMR avers that it did not discover this mistake until sometime in January or February of 2004. SMR argues that (1) the Court’s dismissal of BEA for failure to meet the jurisdictional amount cured the diversity defect, because the Court had the power to dismiss a nondiverse, dispensable party under Rule 21; (2) having cured the diversity defect, diversity was not lost by the subsequent merger of SMR into BEA; (3) the Court need not realign the parties; (4) BEA no longer remains a counterdefendant, and BEA and API resolved all claims between them in separate litigation in Tennessee state court; (5) SMR’s claim is independent from any claim of BEA, so SMR was the real party in interest; and (6) SMR’s second amended complaint did not change the nature of the suit such that jurisdiction should have been reestablished at that time.

API filed a reply brief on March 11. Defendant (1) reasserts its argument that the order dismissing BEA was a nullity and was not pursuant to Rule 21, if the Court even had the power to dismiss a party sua sponte under Rule 21; (2) because BEA remained as a counterdefendant, it was a nondispensable party under Rule 19, and therefore the Court could not have dismissed BEA under Rule 21; and (3) under the Full Faith and Credit Clause, the Tennessee court’s order resolving all matters in controversy between BEA and API should bind in this litigation, because BEA replaced

SMR, when it merged SMR out of existence.

## **II. Diversity Jurisdiction**

Federal courts are courts of limited jurisdiction. They possess only that power authorized by the Constitution and statutes. Kokkonen v. Guardian Life Ins. Co. of Amer., 511 U.S. 375, 377 (1994); United States ex rel. McKenzie v. Bellsouth Telecomm., Inc., 123 F.3d 935, 938 (6th Cir. 1997). A litigant may raise a challenge to a federal court's subject matter jurisdiction under Rule 12(b)(1) at any time in the litigation, as can the court sua sponte. Fed. R. Civ. P. 12(h)(3); In re Miller's Cove Energy Co., Inc., 128 F.3d 449, 450 (6th Cir. 1997) (quoting Ford v. Hamilton Invs., Inc., 29 F.3d 255, 257 (6th Cir. 1994)). It is to be presumed that a cause lies outside the federal courts' limited jurisdiction, and the plaintiff has the burden of showing otherwise by proving that subject matter jurisdiction exists. Kokkonen, 511 U.S. at 377; Moir v. Greater Cleveland Reg'l Transit Auth., 895 F.2d 266, 269 (6th Cir. 1990). Parties may not create or destroy subject matter jurisdiction by consent or waiver. Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982).

Federal subject matter jurisdiction exists in several instances. As no party raised a federal question, the only basis for jurisdiction would be diversity of citizenship, as the parties originally asserted. Diversity jurisdiction allows a citizen of one state to sue a citizen of another state in federal court, if the amount in controversy exceeds \$75,000.00, exclusive of costs and interest. See 28 U.S.C. § 1332 (2004). In Strawbridge v. Curtiss, 7 U.S. 267 (1806), the Supreme Court interpreted the original Judiciary Act's diversity provision to require complete diversity of citizenship, and the Court has adhered to that statutory interpretation ever since. Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996). Complete diversity requires that the citizenship of each plaintiff is diverse from the

citizenship of each defendant. Id. In other words, complete diversity exists only when each plaintiff could sue each defendant in federal court.

To determine diversity, the court assesses the citizenship of the parties at the commencement of litigation. Smith v. Sperling, 354 U.S. 91, 93 n.1 (1957); Television Reception Corp. v. Dunbar, 426 F.2d 174, 177 (6th Cir. 1970). If complete diversity existed at the time of filing, then subsequent events or a party's change of citizenship generally will not divest the court of jurisdiction. Wichita R.R. & Light Co. v. Public Utils. of Kansas, 260 U.S. 48, 54 (1922); Television Reception, 426 F.2d at 177. If diversity did not exist at the time of filing, however, subsequent events, such as a change in the domicile of a party or substitution of parties, cannot create it. 13B Wright & Miller, Federal Practice & Procedure, § 3608, at 458 (2d ed. 1984).

Determining whether subject matter jurisdiction exists is a preliminary issue which must be resolved before the court may hear any other issue in the matter. See Moir, 895 F.2d at 269. Clearly, a federal court without subject matter jurisdiction is powerless to take action other than dismissing the case, and other actions taken by a court in such a situation are void. See Antoine v. Atlas Turner, Inc., 66 F.3d 105, 108 (6th Cir. 1995) (stating that a judgment is void if the court that entered it lacked jurisdiction over the subject matter); Avitts v. Amoco Prod. Co., 53 F.3d 690, 694 (5th Cir. 1995) (holding that district court did not have federal question or diversity jurisdiction upon removal and vacating all orders of district court, because "district court lacked subject matter jurisdiction over this action and was therefore without authority to enter its orders"); United States v. 51 Pieces of Real Prop. Roswell, N.M., 17 F.3d 1306, 1309 (10th Cir. 1994) ("[A] judgment is void if the court that enters it lacks jurisdiction over either the subject matter of the action or the parties to the action . . ."); Memphis Am. Fed'n of Teachers, Local 2032 v. Bd. of Educ. of Memphis City Schs., 534

F.2d 699, 701 (6th Cir. 1976) (“Without a finding that there is federal jurisdiction over a particular claim for relief the federal courts are without power to proceed.”); see also Willy v. Coastal Corp., 503 U.S. 131, 137-38 (1992) (stating that, although a final determination of lack of subject-matter jurisdiction of a case in a federal court precludes further adjudication of it, such a determination does not automatically wipe out actions taken by the district court that are collateral to the merits, such as an imposition of Rule 11 sanctions).

It is entirely undisputed that this Court lacked subject matter jurisdiction when Plaintiffs filed this case. BEA, a Delaware corporation, was not diverse from Defendant API, also a Delaware corporation, and therefore complete diversity did not exist. Had Plaintiffs pled BEA’s accurate corporate citizenship, the Court would immediately have dismissed this case for lack of jurisdiction. Without the accurate facts, however, the Court proceeded to take several actions in this case, including dismissing BEA for failure to meet the jurisdictional amount and granting partial summary judgment to SMR. Without subject matter jurisdiction, the Court had no power to take those actions. Consequently, the Court vacates those orders - including the grant of partial summary judgment to SMR - as void, and grants API’s motion for dismissal.

SMR argues that, because the Court dismissed BEA for other reasons, any jurisdictional defect was effectively cured, and the Court should allow the case to proceed in its current state. Specifically, SMR argues that, because under Rule 21 the Court may dismiss nondiverse, dispensable parties, see Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 832 (1989), which they aver BEA to have been, the prior dismissal order should be reinterpreted as a dismissal under Rule 21 and the citizenship of the remaining parties should control. The Court finds this argument to be without merit. The Court’s dismissal of BEA was not pursuant to Rule 21. The Court made no findings that

BEA was a “dispensable” party under Rule 19, as is necessary for a Rule 21 dismissal, nor that BEA was nondiverse (which the Court could not have done, given the incorrect facts that Plaintiffs presented to it). The Court declines to rewind the clock and recharacterize the prior order simply to make up for Plaintiffs’ mistake, when it was Plaintiffs’ burden to allege correct and adequate jurisdictional facts, and when Plaintiffs vigorously opposed the order dismissing BEA.<sup>3</sup> Simply put, the Court’s order dismissing BEA was beyond the Court’s powers and therefore is void. Without that voided order, the parties remained as they were at the time of filing: complete diversity did not exist, and the Court did not then and does not now have subject matter jurisdiction.

Upon a finding that BEA was a dispensable party, the Court could use its Rule 21 power to drop BEA from the case now. See id. The Court finds that to be an inappropriate solution to this situation, in which actions of the party with the burden to prove jurisdiction rendered this jurisdictional defect undetected until several years after filing. First, this is a simple state law breach of contract action, which the state courts are fully competent to adjudicate. Second, this case has not reached the stage where concerns of efficiency and economy outweigh the principles behind the limited jurisdiction of the federal courts. Cf. Caterpillar, 519 U.S. at 75-76 (holding that, while it was error for district court not to remand case when complete diversity did not exist upon removal, when jurisdictional defect had been cured by time of judgment, and case had been tried in federal court, “considerations of finality, efficiency, and economy become overwhelming” and the trial

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<sup>3</sup>Defendant argues further that BEA currently remains in the action as a counterdefendant. Whether or not that is so, the case between BEA and API in state court resolved all issues between those parties, and principles of estoppel would bar API from raising against BEA any previously considered claims or claims that it should have raised in the state court proceeding. Of course, collateral estoppel would not bar litigation of API’s claims against SMR, because BEA’s take-over of SMR makes it merely a successor in interest to SMR’s defenses against API, and not the real party involved in those claims.



judgment would stand). There has been no trial here, and the parties' discovery efforts may be used in any state court proceeding that follows this. Although this litigation has been ongoing in federal court, having to refile this simple breach of contract action in state court will not unduly burden or prejudice the parties.

Plaintiffs and their attorneys have a duty to verify the factual allegations they present to the Court. Fed. R. Civ. P. 11. The Court is mindful that it became aware of the correct jurisdictional facts only through the initiative of API, not by Plaintiffs' own act. Although it is unclear whether Plaintiffs knew of their mistaken pleadings before Defendant discovered it, upon Plaintiffs' realization of the mistake, they should have alerted the Court to the correct facts. The limited jurisdictional status of the federal courts is a constitutional command that encompasses principles of federalism and respect for our dual court system. U.S. Const. art. III, § 2. Litigants and courts should not ignore that command lightly.

### **III. Conclusion**

Complete diversity was not present between the litigants at the time of filing and was not created by the Court's December 27, 2000 order dismissing BEA for failure to meet the amount in controversy requirement. Without subject matter jurisdiction, the Court was powerless to take actions other than dismissing this case for lack of diversity. Accordingly, the Court **VACATES** all prior orders in this case and **GRANTS** Defendant's motion to dismiss.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2004.

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**BERNICE BOUIE DONALD  
UNITED STATES DISTRICT JUDGE**